11-2682

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ROMAN ARTURO GOMEZ BURGOS,
Petitioner - Appellant,
v.
JANET NAPOLITANO, Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; WAYNE MULLER, Assistant Field Office Director, Office of Detention and Removal for U.S. Immigration and Customs Enforcement; RUBEN PEREZ, Assistant Field Office Director, Office of Detention and Removal for U.S. Immigration and Customs Enforcement; CHRISTOPHER SHANAHAN, New York Field Office Director for the U.S. Immigration and Customs Enforcement; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; ERIC HOLDER, Attorney General of the United States; U.S. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
Respondents - Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF *AMICI CURIAE*
DETENTION WATCH NETWORK, FAMILIES FOR FREEDOM, IMMIGRANT DEFENSE PROJECT, IMMIGRANT RIGHTS CLINIC, IMMIGRATION EQUALITY, KATHRYN O. GREENBERG IMMIGRATION JUSTICE CLINIC, THE LEGAL AID SOCIETY, NEW SANCTUARY COALITION OF NEW YORK CITY, NATIONAL IMMIGRANT JUSTICE CENTER, NATIONAL IMMIGRATION PROJECT, AND NORTHERN MANHATTAN COALITION FOR IMMIGRANT RIGHTS
IN SUPPORT OF PETITIONER-APPELLANT AND IN SUPPORT OF REVERSAL

ALINA DAS, ESQ.
Washington Square Legal Services
Immigrant Rights Clinic
245 Sullivan Street, 5th Floor
New York, NY 10012
Tel: (212) 998-6430
Fax: (212) 995-4031

DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and 29(c), *amici curiae* state that no publicly held corporation owns 10% or more of the stock of any of the parties listed herein, which are nonprofit organizations and community groups.

Pursuant to Fed. R. App. P. 29(c)(5), *amici curiae* state that no counsel for the party authored any part of the brief, and no person or entity other than *amici curiae* and their counsel made a monetary contribution to the preparation or submission of this brief.

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STATEMENT OF INTEREST

Amici curiae are community groups, immigrant rights organizations, and legal service providers whose members and clients are directly affected by the Government's application of *Matter of Rojas*, 23 I&N Dec. 117 (BIA 2001), and its improper, expansive interpretation of the mandatory detention statute. *Amici* include the following organizations: Detention Watch Network, Families for Freedom, Immigrant Defense Project, Immigrant Rights Clinic, Immigration Equality, Kathryn O. Greenberg Immigration Justice Clinic, The Legal Aid Society, New Sanctuary Coalition of New York City, National Immigrant Justice Center, National Immigration Project, and Northern Manhattan Coalition for Immigrant Rights. Detailed statements of interest for each organization are appended after the conclusion of this brief.

Amici share a profound interest in exposing the unjust, harsh, and arbitrary consequences of *Matter of Rojas.* *Amici* agree with the arguments presented by the Petitioner-Appellant in his case, and submit this brief to provide this Court with the broader context in which *Matter of Rojas* operates. As this brief explains, mandatory, no-bond detention carries serious consequences, which Congress did not intend to apply to all noncitizens in removal proceedings. In Point I, *infra*, *amici* describe Congress's chosen statutory scheme and the limited role that mandatory detention serves within this scheme. In Points II and III, *infra*, *amici*

provide case stories to illustrate how *Matter of Rojas* is contrary to this statutory scheme and leads to unreasonable and arbitrary results. As these cases illustrate, *Matter of Rojas* contravenes Congress's chosen scheme by requiring the mandatory, no-bond detention of those individuals most likely to be released on bond: individuals who have long since reintegrated into their communities prior to their immigration detention. Moreover, these cases further demonstrate how *Matter of Rojas* leads to unreasonable and arbitrary results by undermining the rule of law; disrupting the lives of individuals, families, and communities; and leading to detention that often raises serious constitutional concerns. Because of the harsh consequences for our members and clients, unintended by Congress in enacting its detention scheme, *amici* urge this Court to reject the Government's interpretation in *Matter of Rojas*.

ARGUMENT

I. Congress Did Not Intend For Mandatory Detention To Apply To Noncitizens Who Have Long Been Released From Criminal Custody And Have Reintegrated Into Their Communities.

Mandatory detention—detention without the opportunity to seek bond—has profound effects on noncitizens, their families, and communities. Noncitizens subject to mandatory detention are held in immigration custody without any individualized assessment of their risk of flight or danger to the community. 8 U.S.C. § 1226(c). During their detention, they are subject to transfer to any

jurisdiction in the country, including to detention facilities hundreds or thousands of miles away from their families, communities, and access to counsel.[1] As a result, noncitizens who are detained are significantly more likely to lack legal representation and face other, often insurmountable, obstacles in defending their removal cases than non-detained noncitizens.[2] However, the effect of detention on the detainee, his or her family members—even the children, spouse, or parents of the detained—or his or her community cannot be considered by an immigration

[1] Noncitizens who are initially detained in the Northeast are often transferred to remote detention facilities in the Southern and Southwestern U.S., where there is less access to family and legal representation. *See, e.g.*, Human Rights Watch, *A Costly Move: Far and Frequent Transfer Impede Hearings for Immigrant Detainees in the United States* (Jun. 14, 2011), *at* http://www.hrw.org/node/99660; Office of Inspector General, Dep't of Homeland Security, *Immigration and Customs Enforcement Policies and Procedures Related to Detainee Transfers*, OIG 10-13 (Nov. 2009), *at* http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_10-13_Nov09.pdf.

[2] According to a recent study of noncitizen New Yorkers in removal proceedings, sixty percent of detained noncitizen New Yorkers do not have legal representation, compared to only twenty-seven percent of non-detained noncitizen New Yorkers. *New York Representation Study: Preliminary Findings* 1 (May 3, 2011), *at* http://graphics8.nytimes.com/ packages/pdf/nyregion/050411immigrant.pdf. The study also found that seventy-four percent of noncitizens who are represented and released (or never detained) had a favorable outcome in their removal case, whereas only eighteen percent of noncitizen who are represented but detained had a favorable outcome, and only three percent of noncitizens who are both unrepresented and detained had a favorable outcome. *See id.* The data comports with national studies that recognize the negative impact detention may have for noncitizens who seek to defend themselves against removal. *See, e.g.*, OIG Report OIC-10-13, *supra* note 1, at 4 ("Access to personal records, evidence, and witnesses to support bond or custody redeterminations, removal, relief, or appeal proceedings can also be problematic in these cases.").

judge in a mandatory detention case.[3] 8 C.F.R. § 1003.19(h)(2)(i)(D) (depriving immigration judges of jurisdiction to consider whether to release detainees subject to 8 U.S.C. § 1226(c)). Moreover, according to the Government, noncitizens who are subject to mandatory detention must remain detained for the entirety of their administrative removal proceedings—whether such proceedings take days, months, or years.[4] This comes at significant taxpayer expense.[5]

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[3] The mandatory detention of noncitizens can create severe trauma for their families, particularly children. *See* Amy Bess, National Association of Social Workers, *Human Rights Update: The Impact of Immigration Detention on Children and Families* 1-2 (2011), *at* http://www.socialworkers.org/practice/intl/2011/HRIA-FS-84811.Immigration.pdf ("When parents are held in detention, the subsequent family separation poses great risks for their children. . . . Children experience emotional trauma, safety concerns, economic instability, and diminished overall well-being."). Mandatory detention of primary caregivers can also result in children being placed in foster care. *See* Women's Refugee Commission, *Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention* 1-3 (Dec. 2010), *at* http://womensrefugeecommission.org/programs/detention/parental-rights.

[4] The Department of Homeland Security ("DHS") has argued that mandatory detention is constitutional regardless of how long it lasts. *See, e.g.*, *Scarlett v. U.S. Dep't of Homeland Sec.*, 632 F. Supp. 2d 214, 219 (W.D.N.Y. 2009) (noting and rejecting DHS's arguments that its detention of a lawful permanent resident for five years was constitutionally permissible). As discussed below, *see infra* Point III.C, *amici* agree with recent court decisions that have found that prolonged detention raises serious constitutional concerns and that Congress should not be presumed to have authorized such lengthy detention without a bond hearing.

[5] According to DHS estimates, immigration detention costs federal taxpayers $122 per person per day, or $45,000 per person per year, for a total of $1.9 billion a year. *See* DHS, *FY12 Congressional Budget Justification* 938-39 *at* http://www.dhs.gov/xlibrary/assets/dhs-congressional-budget-justification-fy2012.pdf (requesting a $157.7 million increase in its budget for detention over the current year). Detention costs have risen exponentially in recent years. *See id.*;

In creating the statutory scheme governing immigration detention for noncitizens in removal proceedings, Congress chose *not* to mandate detention without bond in all cases. Rather, Congress created mandatory detention as the exception to the general rule. Under the general rule, federal immigration officials have long had the authority to choose whether to detain or release noncitizens based on an individualized assessment of their risk of flight and dangerousness. *See, e.g.*, *Matter of Patel*, 15 I&N Dec. 666, 666 (BIA 1976) ("An alien generally is not and should not be detained or required to post bond except on a finding that he is a threat to the national security, . . . or that he is a poor bail risk." (citations omitted)). In creating an exception to this rule, Congress enacted mandatory detention to serve a limited purpose: to ensure that noncitizens who are incarcerated for certain types of removable offenses will remain in custody until they can be removed.

Congress set forth its statutory scheme for detention in 8 U.S.C. § 1226. Section 1226(a) maintains the Government's longstanding general authority to detain *and* release noncitizens who are placed in removal proceedings. The section states that a noncitizen "may be arrested and detained pending a decision on whether alien is to be removed" and that the Government "may release the alien"

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see also Detention Watch Network, *About The U.S. Detention and Deportation System* (2009) *at* http://detentionwatchnetwork.org/aboutdetention.

on bond or other conditions, "[e]xcept as provided in subsection (c)." 8 U.S.C. § 1226(a) (emphasis added). Subsection (c) thus provides the mandatory detention provision:

> (c) Detention of criminal aliens.
>
> (1) The Attorney General shall take into custody any alien who
>
> (A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,
>
> (B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii),(B), (C), or (D) of this title,
>
> (C) is deportable under section 1227(a)(2)(A)(I) of this title on the basis of an offense for which the alien has been sentence to a term of imprisonment of at least 1 year, or
>
> (D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title,
>
> *when the alien is released*, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

8 U.S.C. § 1226(c)(1) (emphasis added). Section 1226(c)(2) states that the Attorney General may only release noncitizens "described in paragraph [1226(c)(1)]" if the release is "necessary to provide protection to a witnesses, a potential witness" and other witness-related provisions. 8 U.S.C. § 1226(c)(2). The effective date of the mandatory detention provision is October 9, 1998. *See* Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA),

Pub. L. No. 104-208, Div. C, § 303(b), 110 Stat. 3009, 3009-586 (Sept. 30, 1996).[6]

Read in its entirety, 8 U.S.C. § 1226 provides the Attorney General with the authority to arrest, detain, and release immigrants pending removal proceedings, except for a specified class of noncitizens whom the Attorney General detains "when . . . released" from custody for certain enumerated criminal offenses. In examining the "when . . . released" clause, federal courts have been nearly unanimous on the plain meaning of this provision. "For over a decade, courts analyzing section 1226(c) have consistently interpreted the statute to authorize the government to take an alien into custody on or about the time he is released from custody for the offense that renders him removable." *Monestime v. Reilly*, 704 F. Supp. 2d 453, 458 (S.D.N.Y. 2010) (emphasis added) (quoting *Garcia v. Shanahan*, 615 F. Supp. 2d 175, 180-181 (S.D.N.Y. 2009)).[7] Only those

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[6] The statute only applies to people released from custody for an enumerated offense on or after October 9, 1998. *See* IRIRRA, 110 Stat. at 3009-586; *Matter of Garcia-Arreola*, 25 I&N Dec. 267, 269 (BIA 2010).

[7] *See, e.g.*, *Beckford v. Aviles*, No. 10-2035 (JLL), 2011 WL 3444125, at *7 (D.N.J. Aug. 5, 2011) (holding that § 1226(c)(1) applies only to noncitizens detained at the time of their release from criminal custody for their specified removable offense); *Jean v. Orsino*, No. 11-3682 (LTS) (S.D.N.Y. June 30, 2011) (same); *Sylvain v. Holder*, No. 11-3006 (JAP), 2011 WL 2580506, at *5-6 (D.N.J. June 28, 2011) (same); *Hosh v. Lucero*, No. 1:11-cv-464, 2011 WL 1871222, at *2-3 (E.D. Va. May 16, 2011) (same); *Aparicio v. Muller*, No. 11-cv-0437 (RJH) (S.D.N.Y. Apr. 7, 2011) (same); *Louisaire v. Muller*, 758 F.Supp.2d 229, 236 (S.D.N.Y. 2010) (same); *Gonzalez v. Dep't of Homeland Sec.*, No. 1:CV-10-0901, 2010 WL 2991396, at *1 (M.D. Pa. July 27, 2010) (same); *Bracamontes v. Desanti*, No. 2:09cv480, 2010 WL 2942760, at *6 (E.D. Va. June 16, 2010), adopted by, 2010

individuals detained when released from criminal custody for their enumerated offenses are subject to mandatory, no-bond detention pending their removal. Anyone else may still be subject to discretionary detention—but with the possibility of release on bond under § 1226(a).

This reading of the statute, adopted by the majority of federal courts and advanced by the Petitioner in this case, gives meaning to Congress's chosen terms.[8] *See* Pet'r Br. at 14-32. Congress could have predicated mandatory detention upon whether a person had been convicted of certain offenses without saying anything about the timing of release from criminal custody, but it did not. It did not do so

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WL 2942757 (E.D. Va. July 26, 2010); *Dang v. Lowe*, No. 1:CV-10-0446, 2010 WL 2044634, at *2 (M.D. Pa. May 20, 2010); *Monestime v. Reilly*, 704 F. Supp. 2d 453, 458 (S.D.N.Y. 2010) (same); *Khodr v. Adduci*, 697 F. Supp. 2d 774, 778 (E.D. Mich. 2010) (same); *Scarlett v. U.S. Dep't of Homeland Sec.*, 632 F. Supp. 2d 214, 219 (W.D.N.Y. 2009) (same); *Waffi v. Loiselle*, 527 F. Supp. 2d 480, 488 (E.D. Va. 2007) (same); *Bromfield v. Clark*, No. C06-0757-JCC2006, 2007 WL 527511, at *4 (W.D. Wash. Feb. 14, 2007) (same); *Zabadi v. Chertoff*, No. C05-03335, 2005 WL 3157377, at *5 (N.D. Cal. Nov. 22, 2005) (same); *Quezada-Bucio v. Ridge*, 317 F. Supp. 2d 1221, 1228 (W.D. Wash. 2004) (same). *But see Diaz v. Muller*, No. 11-4029, 2011 WL 3422856, at *2 (D.N.J. Aug. 4, 2011) (finding "when . . . released" to be ambiguous); *Gomez v. Napolitano,* No. 11-cv-1350, 2011 WL 2224768 (S.D.N.Y. May 31, 2011) (same); *Sulayao v. Shanahan*, No. 09-Civ.-7347, 2009 WL 3003188 (S.D.N.Y. Sept. 15, 2009) (same); *Serrano v. Estrada*, No. 3:01CV1916M, 2002 WL 485699 (N.D. Tex. Mar. 6, 2002) (holding that mandatory detention was unconstitutional but noting in dicta that § 1226(c) is ambiguous).

[8] *Amici* do not suggest that they agree with Congress's choice to deprive bond hearings to noncitizens who are detained at the time of their release from incarceration for the convictions specified in the mandatory detention statute. Regardless of the merits of Congress's choice, however, *amici* submit that *Matter of Rojas* goes much further than even Congress intended.

because it intended for mandatory detention to serve a specific and limited function—to ensure that individuals who are incarcerated for certain types of removable offenses will *remain* in custody until the timely completion of their removal proceedings. As the First Circuit recently explained in addressing a related issue:

> The mandatory detention provision does not reflect a general policy in favor of detention; instead, it outlines specific, serious circumstances under which the ordinary procedures for release on bond at the discretion of the immigration judge should not apply. . . . [F]inding that the "when released" language serves this more limited but focused purpose of preventing the return to the community of those released in connection with the enumerated offenses, as opposed to the amorphous purpose the Government advances, avoids attributing to Congress the sanctioning of the arbitrary and inconsequential factor of any post-[Oct. 8, 1998] custodial release becoming the controlling factor for mandatory detention.

Saysana v. Gillen, 590 F.3d 7, 17 (1st Cir. 2009). By tying the application of mandatory detention to the release from criminal custody, Congress intended to keep a narrow set of noncitizens detained continuously, from their criminal incarceration to their timely deportation. Nothing in the statutory scheme indicates that Congress intended for this exception—mandatory detention—to swallow the general rule, which authorizes the discretionary detention and release of noncitizens who are living in and have long reintegrated into their communities.

II. *Matter of Rojas* Is Contrary To Congress's Statutory Scheme.

In *Matter of Rojas*, the Board of Immigration Appeals ("BIA") expanded mandatory detention far past Congress's limited purpose. The BIA held that the

mandatory detention statute applies to any noncitizen who is released from criminal custody for an enumerated offense on or after the effective date of the statute, regardless of how long afterwards federal immigration officials ultimately detains him or her. *See id.*, 23 I&N Dec. at 127. Notably, the BIA acknowledged that the "when . . . released" clause in § 1226(c) "does direct the Attorney General to take custody of aliens immediately upon their release from criminal confinement." *Id.* at 122. However, the BIA held that the "when . . . released" clause was a "statutory command" rather than a "description of an alien who is subject to detention," and therefore mandatory detention could apply to noncitizens days, months, or even years their release from criminal custody. *See id*. at 121, 122.

In the years following *Matter of Rojas,* the Government has vigorously defended the majority's decision by detaining, without bond, untold numbers of noncitizens months or years after their release from criminal custody.[9] As demonstrated through the case examples below, this application of the mandatory detention is contrary to Congress's intent and has routinely led to the detention,

[9] DHS detains nearly 400,000 noncitizens each year. *See* Dora Schriro, U.S. Department of Homeland Security, Immigration and Customs Enforcement, *Immigration Detention Overview and Recommendations 2* (Oct. 6, 2009). Approximately sixty-six percent of detainees on a given day are subject to mandatory detention. *See id.* DHS does not publish statistics on how many of these mandatorily detained noncitizens are being held pursuant to its reading of *Matter of Rojas,* however.

without bond, of individuals who are neither flight risks nor dangers to the community.

A. *Matter of Rojas* Requires The Mandatory Detention of Noncitizens Who Are Most Likely To Establish That They Are Not A Flight Risk Or Danger To The Community—Individuals Who Have Long Since Been Released From Criminal Custody For An Enumerated Offense.

The BIA justified its expansive reading of the mandatory detention statute in *Matter of Rojas* as being necessary to give meaning to Congress's intent to effectuate the removal of noncitizens with certain types of criminal convictions, whom Congress deemed to be per se flight risks or dangers to the community. *Id.*, 23 I&N Dec. at 122. However, the BIA's reading of the law has had the opposite effect: it prevents immigration officials from granting bond to the noncitizens who are most likely to establish that they are not a flight risk or danger to the community—individuals who, by definition, have had no recent convictions for any offense enumerated in § 1226(c)(1)(A)-(D).

For example, Mr. Patrick Monestime is a longtime lawful permanent resident from Haiti who came to the United States at the age of nine. *See Monestime v. Reilly*, 704 F. Supp. 2d 453, 455 (S.D.N.Y. 2010); *see also* Hab. Pet'n, *Monestime v. Reilly*, No. 10-cv-1374 (WHP) (S.D.N.Y. filed Feb. 23, 2010) (hereinafter "Monestime Hab. Pet'n"). Prior to his detention, he was living with his mother, a U.S. citizen, helping to support his family with their daily needs and

working in the construction field. *See* Monestime Hab. Pet'n at 7. In 2009, Mr. Monestime was detained by DHS and denied a bond hearing pursuant to *Matter of Rojas*. *See id.* at 1. DHS charged him with removability based on two misdemeanors, from 1997 and 2002, and subjected him to mandatory detention despite the nearly eight years that had passed since his last allegedly removable offense. *See id.* at 6. DHS continued to detain him for several months without a bond hearing, even after the January 2010 earthquake in Haiti and temporary moratorium on removals to Haiti guaranteed that his proceedings would become prolonged. *See Monestime*, 704 F. Supp. 2d at 458. This detention exacted a considerable toll on his family members. *See* Monestime Hab. Pet'n at Exh. H.

In granting his habeas petition, the district court emphasized the lack of any negative public safety factors evident in his case. *See id.* As the court noted, "given that eight years have passed since Monestime was convicted of his second misdemeanor, there appear to be no public safety factors justifying his prolonged detention." *Id.* at 458. The court explained that a bond hearing "is particularly important when, as here, an alien is being deported for an offense *committed many years prior to his detention and removal charges*." *Id.* (emphasis added). Under these circumstances, when an individual is not detained when released from criminal custody, the Government "can only determine whether [that individual] poses a risk of flight or danger to the community through an individualized bond

hearing." *Id.* The court ordered the Government to provide Mr. Monestime a bond hearing, and Mr. Monestime was later released from detention. *See* Decl. of Alina Das, Esq. (hereinafter "Das Decl.") (on file with *amici*).

Like Mr. Monestime, all of the individuals affected by *Matter of Rojas* have, by definition, committed no further offenses designated in the mandatory detention statute, 8 U.S.C. § 1226(c)(1)(A)-(D), since their past offense. This simple fact illustrates how *Matter of Rojas* undermines Congress's statutory scheme by denying bond hearings to persons who do not present a categorical danger to the public.

Nor does *Matter of Rojas* further Congressional intent to deny bond hearings to those persons who are categorically flight risks, i.e., noncitizens presumed to be high risks for eluding immigration authorities. Indeed, many of the noncitizens who are affected by *Matter of Rojas* come to the attention of federal immigration officials precisely because they affirmatively present themselves to immigration officials—by applying to renew their permanent resident cards (green cards), applying for citizenship, appearing for immigration inspection after a brief trip abroad, or even after presenting themselves to federal immigration offices or immigration court.

For example, Mr. Y Viet Dang is a longtime lawful permanent resident from Vietnam who was detained pursuant to *Matter of Rojas* on February 9, 2010, when

he applied for U.S. citizenship and came to immigration authorities to check the status of his application. *See Dang v. Lowe,* No. 1:CV-10-0446, 2010 U.S. Dist. LEXIS 49780, *3 (M.D. Pa. May 7, 2010) (Report and Recommendation). After applying for citizenship, he was placed in removal proceedings based on two decade-old convictions involving possession of a firearm and theft, for which he was eligible for relief from removal. *See id.* at *3 (noting his pending application for adjustment of status and a discretionary waiver). In the ten years that had passed since his release from criminal custody for those crimes, Mr. Y Viet Dang had reintegrated into his community, working and raising his U.S. citizen child with his U.S. citizen wife, a U.S. Army lieutenant. *See id.* at *4 n.8; Decl. of Brennan Gian-Grasso, Esq. (on file with *amici*) (hereinafter "Brennan Decl."). At no time did he attempt to elude immigration authorities; in fact, he repeatedly made himself and his criminal records available to immigration officials through his applications to renew his lawful permanent resident card and to become a U.S. citizen. *See id.* at *3. As the district court noted in granting his habeas petition, ICE waited almost ten years, with no explanation, to take Mr. Dang into custody. *Id.* The court noted that, contrary to Congress's intent behind mandatory detention to prevent the release of individuals whom Congress presumed were categorically flight risks, "it appears from the record that Petitioner Dang is very likely to appear for his removal proceedings based on the various other

applications he has filed over the years with ICE and the fact that he appeared to have cooperated with ICE with respect to these applications." *Id.* at *4 n.8. After winning his habeas petition, Mr. Dang was released on $5,000 bond. *See* Brennan Decl. Yet, because of *Matter of Rojas*, Mr. Dang spent three months of his life—nearly a decade after his removable convictions—in a remote detention center in Pike County, PA, separated from his wife and child and unable to work—before his habeas victory. *See id.* at *6. Like many others affected by *Matter of Rojas*, no purpose was served by his mandatory detention.

B. Noncitizens Who Have Won Habeas Challenges To *Matter Of Rojas* Have Been Subsequently Granted Release On Bond.

Indeed, since the BIA's decision in *Matter of Rojas*, scores of noncitizens who have been detained months or years after their release from criminal custody have filed habeas petitions, seeking a bond hearing. In reviewing these cases, *amici* has found numerous examples where Immigration Judges have granted bond because the individual—despite having been subjected to mandatory detention under *Matter of Rojas*—clearly posed no flight risk or danger to the community.

This should be unsurprising since individuals affected by *Matter of Rojas* are precisely the individuals who have built up months or years of evidence since their prior convictions demonstrating their deep ties to the community and evidence of rehabilitation. In order to qualify for bond, a detained noncitizen must demonstrate that she does not pose a flight risk or danger to the community. *See Matter of*

Guerra, 24 I&N Dec. 37, 38 (BIA 2006). Indeed, under the BIA's view, an Immigration Judge is powerless to grant bond, even under 8 U.S.C. § 1226(a), if the noncitizen presents a danger to the community. *See Matter of Urena*, 25 I&N Dec. 140 (BIA 2009). Factors relevant to determining flight risk or danger to the community include the "length of residence in the community," the "existence of family ties," and "stable employment history," *Matter of Andrade*, 19 I&N Dec. 488, 489 (BIA 1987), as well as "the alien's criminal record, including . . . the recency of such activity," *Guerra*, 24 I&N Dec. at 40.

These are precisely the factors that the individuals who have won habeas challenges to *Matter of Rojas* have routinely established. For example, after a federal court ordered a bond hearing for Ysaias Quezada-Bucio, the Immigration Judge ordered his release on $7,500 bond. *See Quezada-Bucio v. Ridge*, 317 F. Supp. 2d 1221 (W.D. Wash. 2004) (ordering bond hearing); Pet'r Motion for EAJA Fees, *Quezada-Bucio v. Ridge*, No. C03-3668L (W.D. Wash.) (filed on Jul. 1, 2004), at 2 (noting release on $7,500 bond). After his release, Mr. Quezada-Bucio eventually won his case, five years after federal immigration officials put him into removal proceedings. *See In re: Quezada-Bucio*, Seattle, WA (Imm. Ct. Oct. 28, 2008) (on file with *amici*) (terminating Mr. Quezada-Bucio's case on the ground that his conviction is not a removable offense). Mr. Quezada-Bucio had been detained three years after his release from criminal custody. *See Quezada-*

Bucio, 317 F. Supp. 2d at 1225. He spent eight months in detention before the federal district court ordered a bond hearing. *See id.*

Similarly, Mr. Feguens Jean, a longtime lawful permanent resident with extensive ties to the U.S. whose case is also discussed in detail below, *see* Point III.C, *infra*, was released on bond following a successful habeas petition. *See* Feguens Bond Order (N.Y. Imm. Ct. July 11, 2011) (on file with *amici*). He had lived in the United States for over twenty-five years, was engaged to be married and was the primary caretaker of his two young U.S. citizen children, and had been gainfully employed as a chef at the time of his detention. *See* Hab. Pet'n, *Jean v. Orsino*, No. 11-3682 (LTS) (S.D.N.Y filed May 31, 2011). The Immigration Judge granted him a $10,000 bond to return to his family pending his removal proceedings. *See* Feguens Bond Order.

Mr. Hosh Mohamed Hosh presents yet another example of a lawful permanent resident granted bond following a successful habeas challenge to *Matter of Rojas*. *See Hosh v. Lucero*, No. 1:11-cv-464, 2011 WL 1871222, at *2-3 (E.D. Va. May 16, 2011). Mr. Hosh and his family immigrated to the United States from Somalia as asylees over a decade ago. *See id.* He was detained by ICE three years after receiving fully suspended sentences for his Virginia convictions, but was eligible for relief from removal given the persecution and torture he faces if deported to Somalia. *See id.*; *see also* Hab. Pet'n, *Hosh v. Lucero*, No. 1:11-cv-464

(E.D. Va. filed Apr. 29, 2011). After Mr. Hosh won his habeas petition, an Immigration Judge held a bond hearing and ordered his release on $10,000 bond, pending his removal proceedings. *See* Decl. of Ofelia Calderon, Esq. (on file with *amici*). None of these individuals should have been mandatorily detained. These examples all establish how *Matter of Rojas* has undermined Congress's chosen statutory scheme.

III. *Matter of Rojas* Leads To Unjust, Harsh, And Arbitrary Results.

These examples also illustrate the sheer unreasonableness of the Government's interpretation in these cases. Over the last decade, *Matter of Rojas* has led to unjust, harsh, and arbitrary results in a number of ways described below. In light of these real-life examples, this Court should not permit such a manifestly unjust reading of the mandatory detention statute.

A. *Matter of Rojas* Undermines The Rule of Law By Permitting The Government To Wait Months Or Years Before Subjecting A Free Noncitizen To Detention Without a Bond Hearing.

Matter of Rojas permits the arbitrary denial of bond hearings to noncitizens whom the Government has waited months or years to detain for their past criminal convictions. However reasonable it may be for the Government to delay mandatorily detaining an individual when he or she actively attempts to elude authorities, the Government has no basis for explaining why it would wait months or years to detain an individual who simply returns to his or her family and

community, and then deny that individual an individualized bond hearing once the Government seeks to commence removal proceedings.

The case of Mr. Dang, described above, *see* Point II, *supra*, demonstrates how *Matter of Rojas* leads to the mandatory detention of individuals years after their removable offenses, with no explanation by immigration officials for the delay. *See Dang,* 2010 WL 2044634, at *2. In the ten years that followed Mr. Dang's release from criminal custody, the Government did nothing to even suggest to Mr. Dang that he could be detained without bond for his past offenses, and instead permitted Mr. Dang to return to his family and community and re-establish himself over a nearly a decade. As the district court noted in Mr. Dang's case, "it appears that [Immigration and Customs Enforcement (ICE)] was able to take Petitioner Dang into custody long before February 2010, i.e., during the proceedings with respect to the various other applications Petitioner filed with ICE throughout the [ten] years after his release from incarceration requesting permission to remain in the United States. Rather than taking Petitioner Dang into custody within a reasonable time after either his release from incarceration or when he appears to have been available to ICE, he was taken into immigration custody nine years and nine months after his reason from custody." *Id.* at *11. The court found ICE's actions to be unreasonable and its reading of the statute unsupportable. *Id.*

Mr. Dang is not alone in his experience. The Government has arbitrarily and inexplicably waited months and often years to detain numerous lawful permanent residents for their past criminal convictions. *See, e.g.*, *Beckford*, 2011 WL 3444125, at *7 (three years); *Jean*, No. 11-3682 (LTS) (ten years); *Gonzalez*, 2010 WL 2991396, at *1 (nearly one year); *Bracamontes*, 2010 WL 2942760, at *1 (eight years); *Monestime*, 704 F. Supp. 2d at 458 (eight years); *Khodr*, 697 F. Supp. 2d at 778 (four years); *Zabadi v. Chertoff*, 2005 WL 3157377, at *5 (two years); *Quezada-Bucio*, 317 F. Supp. 2d at 1228 (three years). To deny these individuals bond without any notice or opportunity to present their individualized history of rehabilitation turns the mandatory detention scheme into an unreasonable and arbitrary trap for immigrants who had long since returned to their productive lives.

B. *Matter Of Rojas* Disrupts The Productive Lives Of Individuals, Families, And Communities.

By disrupting the lives of productive individuals who have long returned to their families and communities, *Matter of Rojas* creates considerable hardship for lawful permanent resident and others who have sought to turn their lives around. This often results in lengthy detention, extreme difficulties in defending one's removal case, and other significant hardships for individuals in removal proceedings who otherwise would be able to remain with their families while pursuing relief from removal.

For example, Mr. Errol Barrington Scarlett is a longtime lawful permanent resident from Jamaica who has lived in the United States for over thirty years. *See Scarlett v. U.S. Dep't of Homeland Sec.*, 632 F. Supp. 2d 214, 216 (W.D.N.Y. 2009). After his release from incarceration for a drug possession offense, Mr. Scarlett returned to his family and found employment with his brother's real estate business. *See* Pet'r Resp. Br., *Scarlett v. U.S. Dep't of Homeland Sec.*, No. 08-CV-534 at 10 (filed Jun. 19, 2009) ("Scarlett Resp. Br.). He did not commit any additional crimes, and was enrolled in a drug treatment program for over a year. *See id.* After a year and a half following his release from incarceration, Mr. Scarlett received a letter from DHS summoning him to their New York office, which he attended. *See id.* At that appointment, he was given documents charging him with removability based on his drug possession conviction, and was summarily detained without a bond hearing. *See id.*

DHS then transferred Mr. Scarlett to a detention facility in Oakdale, LA, thousands of miles from his family, where his removal case was adjudicated under Fifth Circuit precedent. *See id.*at 11. Under Fifth Circuit law at the time, his drug possession offense was deemed a "drug trafficking aggravated felony" and he was denied eligibility to seek cancellation of removal. *See id.* After years of litigation, he was eventually able to secure review within the Second Circuit, which rejected

DHS's arguments that he had an aggravated felony. *See Scarlett v. U.S. Dept. of Homeland Sec.*, 311 Fed.Appx. 385 (2d Cir. 2009).

In 2009, Mr. Scarlett filed a pro se habeas petition, seeking a bond hearing. *See Scarlett*, 632 F. Supp. 2d at 216. He had been detained for over five years, transferred to different facilities, and had never been provided an individualized hearing about his risk of flight or danger to the community. Concluding that *Matter of Rojas* was contrary to Congressional intent and that Mr. Scarlett's prolonged detention raises serious constitutional concerns, the district court granted his petition and ordered a bond hearing. *See id.* at 219-223. While Mr. Scarlett was ultimately victorious in his quest for release, he will never regain the five years of his life that he lost while he was in detention without a bond hearing.

Such mandatory detention often comes at a high price to the lives that noncitizens have worked hard to rebuild, and the wellbeing of noncitizens' families and communities. For example, Ms. Julie Evans is a longtime lawful permanent resident from the United Kingdom who has lived in the United States for nearly fifty years. *See Evans* Hab. Pet'n at 6. After experiencing domestic violence and homelessness, Ms. Evans developed a drug addiction problem and received several convictions. *See id.* at 6-7. After her release from jail in 2009, she successfully participated in drug rehabilitation and received significant support from a local reentry and mentorship program. *See id.* She was able to support herself, find an

apartment to live with her daughter, and receive medical treatment for serious injuries she received during her period of homelessness. *See id.* at 7. She also contributed back to the reentry and mentorship program that had assisted her. *See id.*

During this time, Ms. Evans applied to renew her permanent resident card. *See id.* at 8. After that point, nearly a year and a half after her release from incarceration, her life was disrupted when ICE officers came to her home, arrested her, and transferred her to a detention facility in Monmouth County jail, several hours away from home. *See id.* As a result, she was separated from her daughter, who was evicted from her apartment, and she was unable to continue her work with her reentry program. *See* Das Decl. She spent five months in detention in Monmouth County jail without receiving a bond hearing, pursuant to *Matter of Rojas*. *See id.* After she secured *pro bono* counsel, she filed a habeas petition seeking a bond hearing and DHS released her. *See id.* While she was able to rebuild her life following her immigration detention, both she and her family went through significant hardships over the five month period she was detained without a bond hearing.

Similarly, this reflects the experience of Mr. Feguens Jean, a longtime lawful permanent resident from Haiti who has been living in the United States for over twenty-five years. *See* Hab. Pet'n, *Jean v. Orsino*, No. 11-3682 (LTS)

(S.D.N.Y filed May 31, 2011). On March 22, 2011, immigration officials detained Mr. Jean based on three decade-old convictions that he received in 2001. *See id.* at *1-3. Because of his detention without a bond hearing, Mr. Jean was separated from his fiancé and two young daughters, for whom he was the main caregiver. *See id.* at Exh. A. Because he could not return to work, he was suspended from his job as a hotel chef, putting his eldest daughter's health insurance in jeopardy. *See id.* at 4. His fiancé expressed deep concerns about the emotional health of their children, the youngest of whom cried on a daily basis during his detention. *See id.* at Exh. A. Despite Mr. Jean's significant family ties and evidence of rehabilitation, DHS refused to afford him a bond hearing, due to *Matter of Rojas*. Mr. Jean remained detained for several months, until he filed a habeas petition and the federal court ordered the Government to provide him with a bond hearing. *See Jean v. Orsino*, No. 11-3682 (LTS) (S.D.N.Y. June 30, 2011). The trauma his family experienced by his detention, however, will not be simply erased.

C. Detention Pursuant To *Matter of Rojas* Often Results In Detention Raising Serious Constitutional Concerns.

Disturbingly, *Matter of Rojas* cases often become intertwined with serious constitutional questions, because the application of *Matter of Rojas* tends to lead to the prolonged detention of individuals who have substantial challenges to their removability. In *Demore v. Kim*, the Supreme Court upheld the constitutionality of mandatory detention for the brief period of time necessary to complete removal

proceedings for a noncitizen who had conceded removability. *Demore v. Kim*, 538 U.S. 510, 532 (2003).[10] Since *Demore,* federal courts have recognized that when detention has become prolonged, or when noncitizens raise substantial challenges to removability, the constitutionality of their detention without a bond hearing becomes suspect.[11] These are the very scenarios that often arise in *Matter of Rojas* cases.

For example, as in the case of Mr. Scarlett, *see* Point III.B, *supra*, the government's application of mandatory detention under *Matter of Rojas* lead to significantly prolonged detention. Mr. Scarlett was detained for five years without a bond hearing before a federal district court intervened. *See Scarlett*, 632 F. Supp. 2d at 216. During that time, he was transferred to various facilities, had his case adjudicated under legal standards that were contrary to Second Circuit precedent

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[10] Justice Breyer specifically noted that the mandatory detention of individuals who had substantial claims against their removability raised serious due process concerns. *See, e.g., Demore*, 538 U.S. at 577 (Breyer, J., concurring in part and dissenting in part).

[11] *See, e.g.*, *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 950 (9th Cir. 2008) (concluding that prolonged detention in the absence of an individualized hearing would raise serious constitutional problems); *Ly v. Hansen*, 351 F.3d 263, 267, 271-72 (6th Cir. 2003) (same); *Tijani v. Willis*, 430 F.3d 1241, 1247 (9th Cir. 2005) (Tashima, J., concurring) (interpreting § 236(c) as applying only to immigrants who cannot raise "substantial argument[s] against their removability"); *Gonzales v. O'Connell*, 355 F.3d 1010, 1020 (7th Cir. 2004) (discussing the constitutionality of mandatory detention for an individual who concedes removability and noting that "[a] wholly different case arises when a detainee who has a good-faith challenge to his deportability is mandatorily detained").

regarding his eligibility for relief, and faced lengthy family separation. *See also* Pet'r Resp. Br., *Scarlett v. U.S. Dep't of Homeland Sec.*, No. 08-CV-534 (filed Jun. 19, 2009) at 10-11. The district court found that Mr. Scarlett's detention far exceeded the constitutionally reasonable detention period discussed in *Demore* and *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). *See Scarlett*, 632 F. Supp. 2d at 220-23. Had the Government not relied on *Matter of Rojas* (which the district court also found to be an impermissible construction of Congressional intent, *id.* at 219), Mr. Scarlett would have received a bond hearing in 2004, when he was initially detained, and not lost over five years of his life while fighting his removal case.

Similarly, in Mr. Monestime's case, *see* Point II.A, *supra*, Mr. Monestime was facing prolonged and potentially indefinite detention pending his possible removal to earthquake-struck Haiti. *See Monestime*, 704 F. Supp. 2d at 455. The court noted that the length of Mr. Monestime's detention, at eight months with no end in sight, had exceeded the thresholds for constitutionally permissible detention described in *Demore* and *Zadvydas.* Given that individuals held under *Matter of Rojas*—i.e., individuals who by definition are facing removal for old convictions committed long before their custody—are the ones likely not to present a public safety risk, *see id.* at 458, their prolonged detention without a bond hearing raises particularly "serious constitutional concerns." *Id.* at 458, 459 ("For Monestime,

who has been held for eight months on removal charges for misdemeanors committed long ago and is now facing indefinite detention, and individualized hearing on the necessity of his detention is constitutionally required.").

Mr. Jean's case, *see* Point III.B, *supra*, also presents these constitutional issues, in that Mr. Jean raised a substantial challenge to removability. In addition to being eligible for cancellation of removal, Mr. Jean also raised a derivative citizenship claim based on his father's naturalization when Mr. Jean was a child. *See* Hab. Pet'n, *Jean v. Orsino*, No. 11-3682 (LTS) (S.D.N.Y filed May 31, 2011) at *3. Serious constitutional questions would arise if a potential U.S. citizen were detained without a bond hearing for removal proceedings. *See Flores-Torres v. Mukasey*, 548 F.3d 708 (9th Cir. 2008) (holding that federal immigration authorities' detention of an individual with a nonfrivolous claim to U.S. citizenship would raise serious due process concerns). In light of such stakes, each day of unlawful mandatory detention comes at too high of a cost.

CONCLUSION

For the foregoing reasons, *amici* respectfully urge this Court to reject *Matter of Rojas* and the Government's interpretation of the mandatory detention statute as contrary to Congressional intent and wholly unreasonable. Doing so will ensure that our community members and clients will receive bond hearings where they may present their individual circumstances, so that the months and years of

evidence of their rehabilitation and reintegration into their families and our communities will not be ignored.

Dated: August 19, 2011
New York, NY

Respectfully submitted,

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Alina Das
Washington Square Legal Services, Inc.
Immigrant Rights Clinic
245 Sullivan Street, 5th Floor
New York, NY 10012
Tel: (212) 998-6467
alina.das@nyu.edu
Counsel for Amici Curiae

APPENDIX:
STATEMENTS OF INTEREST OF *AMICI CURIAE*

Detention Watch Network

As a coalition of approximately 200 organizations and individuals concerned about the impact of immigration detention on individuals and communities in the United States, Detention Watch Network (DWN) has a substantial interest in the outcome of this litigation. Founded in 1997, DWN has worked for more than two decades to fight abuses in detention, and to push for a drastic reduction in the reliance on detention as a tool for immigration enforcement. DWN members are lawyers, activists, community organizers, advocates, social workers, doctors, artists, clergy, students, formerly detained immigrants, and affected families from around the country. They are engaged in individual case and impact litigation, documenting conditions violations, local and national administrative and legislative advocacy, community organizing and mobilizing, teaching, and social service and pastoral care. Mandatory detention is primarily responsible for the exponential increase in the numbers of people detained annually since 1996, and it is the primary obstacle before DWN members in their work for meaningful reform of the system. Together, through the "Dignity Not Detention" campaign, DWN is working for the elimination of all laws mandating the detention of immigrants.

Families for Freedom

Families for Freedom (FFF) is a multi-ethnic network for immigrants and their families facing deportation. FFF is increasingly concerned with the expansion of mandatory detention. This expansion has led to the separation of our families without the opportunity for a meaningful hearing before an immigration judge and has resulted in U.S. citizen mothers becoming single parents; breadwinners

becoming dependents; bright citizen children having problems in school, undergoing therapy, or being placed into the foster care system; and working American families forced to seek public assistance.

Immigrant Defense Project

The Immigrant Defense Project ("IDP") is a not-for-profit legal resource and training center dedicated to promoting fundamental fairness for immigrants accused and convicted of crimes. IDP provides defense attorneys, immigration attorneys, and immigrants with expert legal advice, publications, and training on issues involving the interplay between criminal and immigration law. IDP seek to improve the quality of justice for immigrants accused of crimes and therefore has a keen interest in ensuring that immigration law is correctly interpreted to give noncitizens convicted of criminal offenses the full benefit of their constitutional and statutory rights.

Immigrant Rights Clinic

Immigrant Rights Clinic (IRC) of Washington Square Legal Services, Inc., has a longstanding interest in advancing and defending the rights of immigrants. IRC has been counsel of record or *amicus* in several cases involving federal courts' interpretation of the government's mandatory detention authority under 8 U.S.C. § 1226(c). *See, e.g*., *Demore v. Kim*, 538 U.S. 371 (2005) (*amicus*); *Beckford v. Aviles*, No. 10-2035 (JLL), 2011 WL 3444125 (D.N.J. Aug. 5, 2011) (*amicus*); *Jean v. Orsino*, No. 11-3682 (LTS) (S.D.N.Y. June 30, 2011) (*amicus*); *Louisaire v. Muller*, 758 F.Supp.2d 229 (S.D.N.Y. 2010) (counsel of record); *Monestime v. Reilly*, 704 F. Supp. 2d 453 (S.D.N.Y. 2010) (counsel of record); *Garcia v. Shanahan*, 615 F. Supp. 2d 175 (S.D.N.Y. 2009) (counsel of record); *Matter of Garcia-Arreola*, 25 I. & N. Dec. 267 (BIA 2010) (*amicus*).

Immigration Equality

Immigration Equality is a national organization that works to end discrimination in immigration law against those in the lesbian, gay, bisexual, and transgender ("LGBT") community and immigrants who are living with HIV or AIDS. Incorporated in 1994, Immigration Equality helps those affected by discriminatory practices through education, outreach, advocacy, and the maintenance of a nationwide resource network and a heavily-trafficked website. Immigration Equality also runs a pro bono asylum program and provides technical assistance and advice to hundreds of attorneys nationwide on sexual orientation, transgender, and HIV-based asylum matters. Immigration Equality is concerned by the Department of Homeland Security's use of *Matter of Rojas* to detain noncitizens and hold them for months and years without the possibility of a bond determination to assess their individualized risk of flight or community ties. While in detention, noncitizens, particularly LGBT noncitizens, often face hostile and unsafe detention conditions that deprive them of access to medically necessary treatments and leave them vulnerable to abuse. Also, detained noncitizens are routinely transferred far from available counsel and family to remote and rural detention facilities, where the noncitizen faces insurmountable odds in defending against a removability charge.

Kathryn O. Greenberg Immigration Justice Clinic

Initiated at the Benjamin N. Cardozo School of law in 2008, the Kathryn O. Greenberg Immigration Justice Clinic responds to the vital need today for quality legal representation for indigent immigrants facing deportation, while also providing students with invaluable hands-on lawyering experience. The clinic represents immigrants facing deportation in both administrative and federal court

proceedings and represents immigrant community-based organizations on litigation and advocacy projects related to immigration enforcement issues. Our focus is on the intersection of criminal and immigration law and thus we have a particular interest and expertise in detained removal proceedings generally and the proper application of the mandatory detention law specifically.

The Legal Aid Society

The Legal Aid Society ("Legal Aid"), located in New York City, was founded in 1876 to serve New York's immigrant community and is the nation's oldest and largest not-for-profit law firm for low-income persons. For several decades, Legal Aid has maintained an Immigration Law Unit within its Civil Practice. The Immigration Law Unit focuses on defending immigrants in removal proceedings before the New York Immigration Courts. Many of the Immigration Unit's clients are detained pending the removal proceedings against them. Legal Aid's services include offering educational programs to detained immigrants on immigration court proceedings and defenses to removal, as well as promoting and facilitating pro bono representation. It also provides direct representation to detained respondents before the immigration court, the Board of Immigration Appeals ("BIA"), and the federal district and circuit courts. Many of Legal Aid's detained clients have been deemed subject to mandatory detention even though they were not detained by Immigration and Customs Enforcement until years after they were released from custody for a removable offense. The detention of Legal Aid's clients places a substantial burden on its scarce resources. Representing detained clients requires hours of travel time and additional travel expenses. In addition, detained clients have almost no ability to assist in their own representation by gathering personal documents, such as employment, tax, medical, criminal, and other

records. For these reasons, Legal Aid has a strong interest as amicus curiae in this case.

National Immigrant Justice Center

Heartland Alliance's National Immigrant Justice Center (NIJC) is a Chicago-based organization working to ensure that the laws and policies affecting non-citizens in the United States are applied in a fair and humane manner. NIJC provides free and low-cost legal services to approximately 10,000 noncitizens per year, including 2000 per year who are detained. NIJC represents hundreds of noncitizens who encounter serious immigration obstacles as a result of entering guilty pleas in state criminal court without realizing the immigration consequences.

National Immigration Project

The National Immigration Project of the National Lawyers Guild (NIP/NLG) is a non-profit membership organization of immigration attorneys, legal workers, grassroots advocates, and others working to defend immigrants' rights and to secure a fair administration of the immigration and nationality laws. For nearly a quarter century, NIP/NLG has provided technical assistance to immigration lawyers on defenses to removal, use of immigration waivers and the immigration consequences of criminal conduct. The NIP/NLG has a direct interest in ensuring that the Immigration and Nationality Act is interpreted consistently and that noncitizens receive a full and fair opportunity to present their cases before the immigration courts and the Board of Immigration Appeals.

New Sanctuary Coalition of New York City

The New Sanctuary Coalition of New York City (NSC-NYC) is an interfaith network of immigrant families, faith communities, and organizations, standing

together to publicly resist unjust deportations, to create a humane instead of a hostile public discourse about immigration, and ultimately to bring about reform of the United States' flawed immigration system. NSC-NYC is deeply concerned about the expansion of mandatory detention and has a significant interest in the outcome of this litigation.

Northern Manhattan Coalition for Immigrant Rights

Northern Manhattan Coalition for Immigrant Rights ("NMCIR") was founded in 1982 as a community response to the influx of immigrants settling in Northern Manhattan and the Bronx. Every year, NMCIR helps keep thousands of immigrant families together by providing free and affordable, personalized support around a vast array of family-based immigration petitions. NMCIR helps the immigrant community build visibility and political power via voter registration, civic education, and supporting its member-driven advocacy campaigns around deportation issues. NMCIR has an interest in ensuring that the immigrants it serves have a full and fair opportunity to be heard when facing detention and removal.

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 28.1(e)(2)(B) because this brief contains 6,995 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 point Times New Roman.

Dated: August 19, 2011
New York, NY

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Alina Das, Esq.
Washington Square Legal Services
245 Sullivan Street, 5th Floor
New York, NY 10012
(212) 998-6430
(212) 998-4031

CERTIFICATE OF SERVICE

I, Alina Das, hereby certify that on August 19, 2011 copies of this Brief of Amici Curiae were served via UPS Next Day Air to:

Iris E. Bennett
Jenner & Block LLP
1099 New York Avenue, N.W.
Washington, DC 20001
(202) 639-6000
Counsel for Petitioner

and

Natasha Oeltjen
Assistant U.S. Attorney
Southern District of New York
86 Chambers Street
New York, NY 10007
(212) 637-2769
Counsel for Respondents

I also certify that the original Brief of Amici Curiae plus 5 copies were delivered via UPS Next Day Air on August 19, 2011 to:

Clerk of Court
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

Dated: August 19, 2011
New York, NY

_____

Alina Das
Washington Square Legal Services
245 Sullivan Street, 5th Floor
New York, NY 10012
(212) 998-6430
(212) 995-4031